

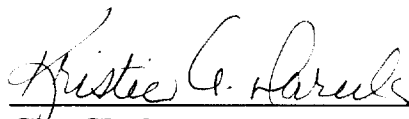
City of St. Charles, Illinois

Ordinance No. 1997-M-137

An Ordinance Amending Title 5, "Business Licenses and Regulations," Chapter 5.20, "Massage Establishments and Massage Therapists," of the St. Charles Municipal Code

**Adopted by the
City Council
of the
City of St. Charles
December 15, 1997**

**Published in pamphlet form by
authority of the City Council
of the city of St. Charles,
Kane and Du Page Counties,
Illinois, December 19, 1997**



City Clerk



Ordinance No. 1997-M-137

**AN ORDINANCE AMENDING TITLE 5,
"BUSINESS LICENSES AND REGULATIONS,"
Chapter 5.20, "MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS"
OF THE ST. CHARLES MUNICIPAL CODE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ST. CHARLES,
KANE AND DUPAGE COUNTIES, ILLINOIS, AS FOLLOWS:**

1. That Title 5, "Business Licenses and Regulations," of the St. Charles Municipal Code, be and is hereby amended by adding Chapter 5.20, "Massage Establishments and Massage Therapists," as follows:

REGULATIONS CONCERNING

MASSAGE THERAPISTS AND MASSAGE ESTABLISHMENTS

- 5.20.010 Definitions.
- 5.20.020 License or Permit Required.
- 5.20.030 Exemptions.
- 5.20.040 Application for Massage Establishment License.
- 5.20.050 Application for Massage Therapist Permit.
- 5.20.060 Application Processing.
- 5.20.070 Transfer - Changes in Ownership or Management.
- 5.20.080 Limitation on Issuance and Renewal of License or Permit.
- 5.20.090 Fees.
- 5.20.100 Expiration of License and Permits - Renewal.
- 5.20.110 Massage Establishment Facilities.
- 5.20.120 Notice of Revocation, Suspension or Refusal of a License or Permit.
- 5.20.130 Revocation or Suspension of a License or Permit.
- 5.20.140 Appeal.
- 5.20.150 Prohibited Acts and Conditions.
- 5.20.160 Penalty for Violation.
- 5.20.170 Premises Restrictions.
- 5.20.180 Grandfather Clause.
- 5.20.190 Severability.

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5.20.010 DEFINITIONS.

The following words or phrases shall have the meanings ascribed to them below, unless otherwise indicated by the context:

MESSAGE: Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external soft parts of the body with the hands or with aid of any mechanical electrical apparatus or appliances with or without rubbing alcohol, liniments, antiseptics oils, powder, creams, lotions, ointments, or other similar preparations used in this practice, under such circumstances that it is reasonably expected that the person to whom treatment is provided, or some third party on such persons's behalf, will pay money or give other consideration or any gratuity therefor.

MESSAGE

ESTABLISHMENT: Any establishment having a source of income or compensation derived from the practice of massage as defined above, and which has a fixed place of business where any person, firm, association or corporation engages in or carries on any of the activities described above.

MESSAGE

THERAPIST: Any person who, for any consideration whatsoever, engages in the practice of massage as defined herein.

PATRON: Any person who receives a massage under such circumstances that it is reasonably expected that he or she will pay money or give other consideration therefor.

SEXUAL OR

GENITAL AREA: The term sexual or genital area is defined as including the genitals, pubic area, anus, or perineum of any person, or the vulva or breasts of a female.

BUTTOCKS: The area at the rear of the human body (sometimes referred to as the gluteus maximus) which lies between two imaginary straight lines running parallel to the ground when a person is standing, the first or top such line being one-half (1/2) inch below the top of the vertical cleavage of the nates (i.e., the

prominence formed by the muscles running from the back of the hip to the back of the leg) and the second or bottom such line being one-half (1/2) inch above the lowest point of the curvature of the fleshy protuberance (sometimes referred to as the gluteal fold), and between two imaginary straight lines, one on each side of the body (the "outside lines"), which outside lines are perpendicular to the ground and to the horizontal lines described above and which perpendicular outside lines pass through the outermost point(s) at which each nate meets the outer side of the leg. Notwithstanding the above, buttocks shall not include the leg, the hamstring muscle below the gluteal fold, or the tensor fasciae latae muscle.

5.20.020 LICENSE OR PERMIT REQUIRED.

- A. It shall be unlawful for any person, association, firm, or corporation to practice or administer any method of treatment listed in this ordinance without first obtaining and maintaining a valid massage therapist permit, as required by this ordinance. It shall also be unlawful for a student/trainee to charge a fee or be compensated for practicing or administering any method of treatment regulated in this ordinance.
- B. It shall be unlawful for any person, association, firm, or corporation to operate a massage establishment in the City without a valid and current license therefor issued by the City pursuant to the terms of this ordinance. A separate license shall be required for each massage establishment location regardless of whether such multiple establishments are operated by the same person, association, firm or corporation.

5.20.030 EXEMPTIONS.

The provisions of this ordinance shall not apply to:

- A. Hospitals, nursing homes and persons holding an unrevoked certificate to practice the healing arts under the laws of the state, or to those working under the direction of any such persons in any such establishments.
- B. Any barber, cosmetologist, esthetician, or nail technician lawfully carrying on their respective businesses to the extent authorized under a valid

unrevoked license or certificate or registration issued by the State of Illinois. Provided, this exemption is only intended to permit normal and customary barber, cosmetologist, esthetician or nail technician services which involve incidental physical contact, such as scalp rubs and facials, which otherwise qualify as massage activities. This exemption is not intended to include, and does not permit, general massage activities as part of any barber, cosmetologist, esthetician or nail technician business beyond that authorized by their state license or certification.

- C. Any state registered athletic trainer who administers such athletic-related massage in the normal course of training duties.
- D. A business which employs or includes not more than one massage therapist shall not be required to apply for or obtain a massage establishment license. Such exempt business must be located in a structure which contains no more than one room where massage activities are performed. Except for businesses which operate separate and distinct hours of operation, such exempt businesses must also be the sole massage activity within such structure. Provided, under no circumstances shall more than two exempt businesses be permitted in any structure. Provided further, a massage therapist's permit shall be required for the individual massage therapist performing massage activities in such exempted business.
- E. Where massage services are actually performed at the patron's premises, including the patron's place of business or residence, a massage establishment license shall not be required for such patron's premises. Provided, a massage therapist's permit shall be required for the massage therapist performing massage activities in such patron's premises.

5.20.040 APPLICATION FOR MASSAGE ESTABLISHMENT LICENSE.

Any person desiring to obtain a license to operate a massage establishment shall make application to the City Clerk. The City Clerk shall have the right to confirm any of the information asked for, or provided in the application, and shall work in conjunction with the Department of Police, where applicable. Applications shall include the following:

- A. The name, (including nicknames or aliases), and address, telephone number, social security number, and age of the applicant. If the applicant is a corporation, the above information shall be provided for the registered agent,

officers, directors, and any stockholder(s) owning in the aggregate more than twenty (20%) percent of the stock of such corporation. If the applicant is a partnership, the above information shall be provided for all general partners, and any limited partner owning more than twenty (20%) percent of the aggregate limited partner interest in such partnership.

- B. The location of the proposed massage establishment.
- C. A complete statement of all convictions of the applicant as provided in this section. If the applicant is a corporation, such statement shall include applicant's officers and directors thereof, and any stockholder or stockholders owning in the aggregate more than twenty (20%) percent of the stock of such corporation. If the applicant is a partnership, such statement shall include all general partners and any limited partner owning more than twenty (20%) percent of the aggregate limited partner interest in such partnership. Such listing shall include but is not limited to the following:
 - 1. Any offense involving sexual misconduct with children or other sex offenses as defined in Article 11 of the Criminal Code of 1961, as amended.
 - 2. A felony based upon conduct or involvement in such business or activity, or related or similar business or activity, within the past ten years; or
 - 3. A felony unrelated to conduct or involvement in such business or activity, or related or similar business or activity, but which felony involved the use of a deadly weapon, violation of the Cannabis Control Act or the Controlled Substance Act, or violence against another person, including rape, within the past ten years; or
 - 4. A misdemeanor or licensing ordinance violation, based upon conduct or involvement in such business or activity, or related or similar business or activity, within the past two years.
- D. A description of the proposed massage establishment, including the number of massage therapists, other activities or business conducted at the same location, and the physical facilities to be used, with a floor layout diagram of same attached thereto.
- E. A statement of whether the business will be conducted and supervised by a manager. In such case, the manager's

name, address, telephone number and age shall be provided along with a statement of any convictions as set forth under Subsection (C), above.

- F. A current certificate of inspection of the premises from an applicable county board of health, if required.
- G. The license and fingerprint fee as provided in Sections 5.20.090A and 5.20.090C.
- H. Business, occupation, or employment of the applicant for three (3) years immediately preceding the date of application. In the event the applicant is a partnership or corporation, the above information will be provided from all applicable persons described in Section 5.20.040A.
- I. In the event the applicant is made aware that any information or document submitted as part of this application process is inaccurate or incomplete, applicant shall immediately notify the City and provide appropriate corrections. Failure to accurately and completely provide or, as necessary, update required information may delay the processing of such application or result in its denial.
- J. Applicants, including all managers, shall be required to present themselves for fingerprints to be taken by the City of St. Charles Department of Police to be used to make a criminal history inquiry. If the applicant is a corporation, fingerprints shall be required of applicant's officers, directors, and any stockholder or stockholders owning in the aggregate more than twenty (20%) percent of the stock of such corporation. If the applicant is a partnership, fingerprints shall be required of all general partners, and any limited partner owning more than twenty (20%) percent of the aggregate limited partner interest in such partnership. Any manager or managers to be conducting the business, unless holders of a valid massage therapy permit under this ordinance, shall likewise present themselves for fingerprinting. Applicant shall pay the fingerprint fee as provided in Section 5.20.090C for each person required to submit fingerprints. Provided, in the case of a renewal application, fingerprints and the fingerprint fee shall not be required from a renewal applicant unless the City Clerk or the Department of Police has reason to believe that the renewal applicant may have unreported convictions.
- K. Two passport size photographs, (1" x 1.5", head and shoulders area, face forward), shall be provided for all

persons required to submit themselves for fingerprinting pursuant to Section 5.20.040J, to be used in the investigation of the applicant.

Provided, in the case of a renewal application, the City Clerk may waive the requirement for photographs if the photographs of the relevant persons are on file.

- L. Proof of United States citizenship, permanent resident alien status, or a valid work permit.

5.20.050 APPLICATION FOR MASSAGE THERAPIST PERMIT.

Any person desiring to obtain a massage therapist permit shall make application to the City Clerk. The City Clerk shall have the right to confirm any of the information asked for or provided in the application, and shall work in conjunction with the Department of Police where applicable. Applications shall include but are not limited to the following:

- A. The name (including any nicknames or aliases), address, telephone number, social security number, and age of the applicant.
- B. A complete statement of all convictions of the applicant as follows:
 - 1. Any offense involving sexual misconduct with children or other sex offenses as defined in Article 11 of the Criminal Code of 1961, as amended.
 - 2. A felony based upon conduct or involvement in such business or activity, or related or similar business or activity, within the past ten years; or
 - 3. A felony unrelated to conduct or involvement in such business or activity, or related or similar business or activity, but which felony involved the use of a deadly weapon, violation of the Cannabis Control Act or the Controlled Substance Act, or violence against another person, including rape, within the past ten years; or
 - 4. A misdemeanor or licensing ordinance violation, based upon conduct or involvement in such business or activity, or related or similar business or activity, within the past two years.
- C. Evidence that such applicant has received training and/or is certified by an institution or nationally recognized

professional association which teaches theory and method of massage as indicated below, and that the applicant has obtained a current cardiopulmonary resuscitation ("CPR") certification. Any applicant for a new, non-renewal permit shall also be required to submit written proof establishing one of the following:

1. That the applicant has graduated from a massage therapy school which requires a minimum of 500 hours for graduation, approved by the American Massage Therapy Association Commission on Accreditation and Training, Associated Bodywork & Massage Professionals, and/or approved by the Illinois State Board of Education.
 2. That the applicant has achieved current, active, or Certified Level membership status within a professional organization with standards comparable to the American Massage Therapy Association or Associated Bodywork & Massage Professionals (including recognized international massage associations: Rolf, Trager, APTA, HPA, IMF, AOBTA, IMTA), with mandated continuing education requirements and a written code of ethics.
 3. That the applicant has achieved a state license from a state which regulates massage therapy by means of a written application.
 4. That the applicant has achieved a passing score on a recognized certification exam (IMF or NCETMB).
 5. That the applicant has received a minimum of 500 hours of training under the direct supervision of a person licensed to practice the healing arts by the State of Illinois, followed by at least ten (10) years active practice of massage therapy within the State of Illinois.
- D. Information regarding whether the applicant is eligible for issuance of a permit as provided pursuant to Section 5.20.080.
- E. The permit and fingerprint fees as provided in Sections 5.20.090B and 5.20.090C shall be submitted along with the completed application.
- F. Business occupation or employment of the applicant for three years immediately preceding the date of application.

- G. In the event applicant is made aware that any information or document submitted as part of this application process is inaccurate or incomplete, applicant shall immediately notify the City and provide appropriate corrections. Failure to accurately and completely provide, or as necessary update, required information may delay the processing of such application or result in its denial.
- H. Applicants shall be required to present themselves for fingerprints to be taken by the City of St. Charles Police Department. Provided, in the case of a renewal application, fingerprints and the fingerprint fee shall not be required from a renewal applicant, unless the City Clerk has reason to believe that the renewal applicant may have reported convictions.
- I. Two passport size photographs (1" x 1.5") of the applicant (head and shoulders area, face forward) shall be provided by the applicant to be used in the investigation of the applicant and the preparation of the permit. Provided, in the case of a renewal application, the City Clerk may waive the requirement for photographs if the applicant's photographs are on file and new photo identification permit cards are not to be issued.

5.20.060 APPLICATION PROCESSING.

- A. An application shall not be considered proper or filed until all information and material required of the applicant pursuant to Sections 5.20.040 or 5.20.050 have been submitted.
- B. Upon receipt of a proper application, the City Clerk shall, along with the City of St. Charles Police Department and the Building Code Enforcement Officer, or his designee, investigate the information contained in the application and shall determine whether the applicant and the premises designated, if applicable, are in full compliance with all applicable laws of the City. The nature and scope of the investigation shall be within the discretion of the City Clerk and the Police Department and shall include, but is not limited to, a criminal history background check and premises inspection. The applicant for an establishment license shall allow the City Building Code Enforcement Officer to inspect the premises and/or review plans for the facility to ascertain whether the premises and/or planned changes are in conformance with the City Building Code. In the event plans are submitted prior to construction, a final inspection will be conducted prior to the issuance of the

license permit to assure compliance with said Building Code.

- C. The investigation, including any required inspections and background checks, shall be completed within thirty-five (35) business days after receipt of a proper application. Provided, the City Clerk may extend this investigation period an additional period, not to exceed an additional ten business days, upon a finding that such additional period is needed to properly complete the investigation. Provided, whenever such an extension period is invoked, written notice shall be provided to the applicant along with the specific reasons for such extension.
- D. If, within ten (10) business days following completion of the investigation, the City Clerk determines that the applicant and premises are in compliance with the applicable laws of the City, the City Clerk shall issue the license.
- E. If, within ten (10) business days following completion of the investigation, the City Clerk determines that the applicant or premises are not in compliance with the applicable laws of the City, the City Clerk shall notify the applicant in writing that the license or permit has been denied, setting forth the reasons therefor and advising the applicant of his or her right to appeal pursuant to Section 5.20.140. Unless a timely appeal is filed as provided in Section 5.20.140, such denial shall be final and effective on the eleventh day following service of the notice on the applicant. The fee paid by the applicant pursuant to Section 5.20.090A OR 5.20.090B shall be returned, less \$50.00 which will be retained as a processing fee. Any fee paid by the applicant pursuant to Section 5.20.090C shall be retained as a processing fee.

5.20.070 TRANSFER-CHANGES IN OWNERSHIP OR MANAGEMENT.

- A. Any license issued pursuant to this ordinance shall be applicable only to the specific applicant and location designated and may not be sold, transferred, or otherwise assigned. Provided, where the licensee remains the same but a request is made to designate and substitute a different location, the City Clerk may approve such new location upon submission of proof that such location is in compliance with the provisions of Section 5.20.110 of this ordinance. A fee of \$50.00 shall be required for processing such location changes.

- B. Any permit issued pursuant to this ordinance shall be applicable only for the specific person and site designated and may not be sold, transferred, or otherwise assigned.
- C. For purposes of this ordinance a transfer of ownership or control of a massage establishment shall mean the sale, lease, or sublease of the business, the transfer of securities which constitute a controlling interest in the business whether by sale, exchange, or similar means, or the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control, or any person not previously listed as an applicant pursuant to Section 5.20.040, acquires an ownership in the business of twenty (20%) percent or more.
- D. A transfer in the ownership or control of a massage establishment shall constitute change in the licensee and the existing license shall be deemed surrendered and extinguished. A new application and license shall be filed and processed as provided in Sections 5.20.040 and 5.20.050 prior to such transfer taking effect. Any transfer in the ownership or control of a massage establishment in violation of this section shall constitute operation of such business without a license.
- E. Notice shall be provided prior to any change of the designated manager conducting business for the massage establishment licensee. The new manager must be qualified to operate the massage establishment as provided in Section 5.20.080. The licensee shall, not less than ten (10) business days before such change is to take effect, give the City Clerk written notice of such change. The notice shall include any information concerning the new manager which is required in Section 5.20.040 of this ordinance. Said proposed new manager must pay the required fee and present themselves for fingerprinting to the St. Charles Police Department for fingerprints to be taken prior to assuming management of the establishment.

5.20.080 LIMITATION ON ISSUANCE AND RENEWAL OF LICENSE OR PERMIT.

No massage establishment license or massage therapist permit shall be issued or renewed under the following circumstances:

- A. To an applicant who has been convicted of the following offenses:

1. Any offense involving sexual misconduct with children or other sex offenses as defined in Article 11 of the Criminal Code of 1961, as amended.
 2. A felony based upon conduct or involvement in such business or activity, or related or similar business or activity, within the past ten years; or
 3. A felony unrelated to conduct or involvement in such business or activity or related or similar business or activity, but which felony involved the use of a deadly weapon, violation of the Cannabis Control Act or the Controlled Substance Act, or violence against another person, including rape, within the past ten years; or
 4. A misdemeanor or licensing ordinance violation, based upon conduct or involvement in such business or activity, or related or similar business or activity, within the past two years.
- B. To an applicant whose license or permit issued under this ordinance has been revoked for cause.
- C. To an applicant who, at the time of application for renewal of any license or permit issued hereunder, would not be eligible for such license or permit upon a first application.
- D. To an applicant under the age of eighteen years of age.
- E. To an applicant where grounds for revocation exist as provided under Section 5.20.130.
- F. In addition to the provisions stated above, no massage establishment license shall be issued or renewed under the following circumstances:
1. To a partnership if any general partner thereof, or any limited partner owning more than twenty (20%) percent of the aggregate limited partner interest in such partnership, would not be eligible to receive a license or permit hereunder.
 2. To a corporation if any officer or director, or any stockholder or stockholders owning in the aggregate more than twenty (20%) percent of the stock of such corporation, would not be eligible to receive a license hereunder.

3. To a corporation unless it is incorporated in Illinois, or unless it is a foreign corporation which is qualified under the "Business Corporation Act of 1983," as amended, to transact business in Illinois.
 4. To any applicant whose place of business is conducted by a manager unless the manager possesses the same qualifications required by the licensee.
 5. To any applicant who is not a beneficial owner of the business to be operated by the licensee.
- G. In addition to the provisions above, no massage therapist permit shall be issued or renewed to an applicant unless such person has received training and/or is certified by an institution or nationally recognized professional association which teaches theory and method of massage as set forth herein, and the applicant has obtained a current cardiopulmonary resuscitation ("CPR") certification. Except for renewal applicants described herein, the applicant shall establish one of the requirements described in Section 5.20.050C.
- H. To an applicant who is not a United States citizen unless the applicant has status as a permanent resident alien or a valid work permit.

5.20.090 FEES.

- A. The fee for massage establishment license required by Section 5.20.040 shall be \$100.00 and shall be paid at the time the application is submitted. Such license shall be valid for two (2) years from its issuance, subject to the terms of this ordinance relating to revocation and suspension.
- B. The fee for massage therapist's permit required by Section 5.20.050 shall be \$100.00 and shall be paid at the time of application submission. Such permit shall be valid for two (2) years from its issuance, subject to the terms of this ordinance relating to revocation and suspension.
- C. A fingerprint fee of \$35.00 shall be paid for each person required to submit fingerprints under this ordinance. Said fee shall be paid at the time of application submission.

5.20.100 EXPIRATION OF LICENSE AND PERMITS - RENEWAL.

- A. Each license and permit shall expire two years from the date of issuance (subject to revocation and/or suspension under the terms of this ordinance) and may be renewed only by making application as provided in Sections 5.20.040 and 5.20.050. This renewal application shall be processed as provided in Section 5.20.060. Application for renewal should be made at least thirty (30) days before the expiration date and, when made less than thirty days before the expiration date, the expiration of the license or permit will not be affected. Renewal applications for massage establishment licenses and massage therapist permits shall be obtained from the City Clerk's office.
- B. When the City Clerk denies renewal of a license or permit, the applicant shall not be issued a license or permit for one year from the date of denial. Provided, if subsequent to denial the City Clerk finds that the basis for denial of the renewal license or permit has been corrected or abated, the applicant may be granted a license or permit.

5.20.110 MASSAGE ESTABLISHMENT FACILITIES.

No license, or renewal thereof, shall be issued to conduct a massage establishment unless an inspection, conducted not less than once each year, discloses that the establishment complies with each of the following minimum requirements:

- A. Hot and cold running water shall be provided.
- B. Adequate private dressing and toilet facilities shall be provided for patrons.
- C. All walls, ceilings, floors, steam rooms, and other physical facilities in a massage establishment shall be kept in good repair and maintained in a clean and sanitary condition.
- D. Clean and sanitary towels and linens shall be provided for each client receiving massage services. No common use of towels or linens shall be permitted.
- E. When any license shall have been revoked for cause, no license shall be granted to any person for the period of one year thereafter for the conduct of a massage establishment in the premises described in the revoked license.

**5.20.120 NOTICE OF REVOCATION, SUSPENSION OR REFUSAL
OF A LICENSE OR PERMIT.**

No license or permit shall be revoked, suspended, or refused until the applicant, license holder, or permit holder has received due notice. Said notice shall be served upon the license holder by delivering the same personally or by leaving such notice at the place of business or residence of the applicant, license holder, or permit holder in the custody of a person fifteen (15) years of age or older. In the event the license holder cannot be found and the service of such notice can not be otherwise made in the manner herein provided, a copy of such notice shall be sent by registered mail, postage prepaid, addressed to the license holder at the licensee's place of business or residence at least ten (10) days prior to the date of such hearing.

5.20.130 REVOCATION OR SUSPENSION OF A LICENSE OR PERMIT.

The license of a massage establishment or the permit of a massage therapist may be revoked or suspended, in addition to the fines provided for in Section 5.20.160 herein, upon one or more of the following grounds:

- A. The licensee or permittee has committed an act(s) of fraud or deceit in the application for license or permit, or renewal thereof, submitted to the City Clerk.
- B. The permittee is engaged in the practice of massage under a false or assumed name, or is impersonating another massage therapist of a like or different name.
- C. The licensee or permittee has committed an act of fraudulent, false, misleading or deceptive advertising, or prescribing medicines, drugs, or practices any other licensed profession without legal authority therefor.
- D. The licensee or permittee has committed an act(s) of prostitution, sexual offense, or trafficking in controlled substances after the date of issuance of a massage establishment license or of a massage therapist permit.
- E. The licensee or permittee is found to be in violation of any section of this ordinance.
- F. The licensee permits acts of prostitution or solicitations for acts of prostitution to be performed within the premises or elsewhere, or permits any procedure during the performance of services within or off the premises that are performed for the purpose of sexual arousal or gratification of any patron, or should

reasonably be expected to cause such result, or permits the use or trafficking of controlled substances or cannabis on the premises, or the commission of any unlawful act on the premises.

- G. The licensee or permittee performs an act of prostitution or other lewd conduct within the premises or without the premises, or solicits an act of prostitution or other lewd conduct on or off the premises, or performs services within or without the premises in such a manner, for the purpose of sexual arousal or gratification of a patron, or which should reasonably be expected to cause such result, or the licensee uses or is trafficking in controlled substances or cannabis.
- H. The licensee or permittee has violated or is not in compliance with Section 5.20.150 of this ordinance and the license or permit has been suspended within the preceding twenty-four (24) months.
- I. A licensee or a permittee has knowingly allowed prostitution on the premises.
- J. A licensee or a permittee knowingly conducted massage activities in the City during a period of time when the licensee's license, or permittee's permit, was suspended.
- K. Within a twenty-four (24) month period, a person or persons committed an offense as listed in Section 5.20.080A, which substantially occurred in or on a licensed premises, and for which a conviction has been obtained, and the person or persons were employees of the licensee at the time the offenses were committed. The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- L. A licensee is delinquent in payment to the City for ad valorem taxes or other taxes related to the massage therapy business.

5.20.140 APPEAL.

- A. Any applicant, licensee or permit holder who receives a notice of denial, revocation, or suspension may file an appeal with the City Administrator as provided herein. Such appeal shall be filed with the City Administrator in writing no later than ten (10) business days following receipt of the notice and shall include a response to the City Clerk's notice. Such response shall include a brief statement addressing the substantive deficiencies cited in the City Clerk's notice and shall set forth the basis

for why the license or permit should not be denied, revoked, or suspended. If an appeal is filed of an order of the City Clerk suspending or revoking a license or permit, such suspension or revocation shall be stayed pending final order of the City Administrator as provided in this section.

- B. The City Administrator shall schedule an informal public hearing not later than ten (10) business days following receipt of such appeal. The purpose of the hearing will be to offer the applicant, licensee or permit holder an opportunity to show cause why the application should not be denied, or why the license or permit should not be suspended or revoked. A record shall be made of the informal public hearing and documents may be submitted and/or testimony given, either in person or through sworn affidavit. This record may be made by electronic recording. The City Administrator shall have the power to administer oaths and to continue the hearing from time to time to permit the applicant to provide additional information. Provided, the City Administrator may designate a hearing officer to schedule, convene and conduct the public hearing. In such case, the hearing officer shall have the same powers as the City Administrator to administer oaths and to continue the hearing from time to time to permit the applicant to provide additional information. Where such designation has been made, the hearing officer shall submit proposed findings and recommendations to the City Administrator within twenty-one (21) days of the close of the hearing.
- C. Within twenty-eight (28) days after the close of hearing set forth in Subsection B, above, the City Administrator shall make written findings of fact and issue an appropriate order. A copy of such order shall be promptly served upon the applicant, licensee, or permit holder. If the City Administrator determines that the license or permit should be revoked or suspended, the suspension or revocation shall take effect immediately upon receipt, unless otherwise specified.
- D. The decision of the City Administrator as provided in Subsection C, above, shall be the final administrative action of the City with respect to the license, permit or application and shall be subject to the immediate appeal by the licensee, permit holder or applicant to the Circuit Court. Such appeal to the Circuit Court shall be filed not later than thirty-five (35) days following receipt of the City Administrator's findings and order. Failure to file such appeal as provided herein shall render the City Administrator's decision final.

5.20.150 PROHIBITED ACTS AND CONDITIONS.

- A. No employee or operator shall perform, offer, or agree to perform any act which would require the touching of a patron's sexual or genital area.
- B. The sexual or genital areas and buttocks of patrons must be covered by non-transparent towels, clothing, cloths or undergarments at all times while in a massage establishment premises, except while said patrons are alone in a washroom, bathroom, shower, or clothes changing area.
- C. It shall be unlawful for any person, knowingly, in a massage establishment, to place his or her hand upon, to touch with any part of his or her body, to fondle in any manner, or to massage, a sexual or genital area of any other person.
- D. No person shall administer a massage to a patron if the massage therapist has a skin fungus, skin infection, skin inflammation, or skin eruption, unless a physician duly licensed by the State of Illinois certifies in writing that such massage therapist may safely administer a massage and prescribing the condition thereof.
- E. No employee or operator shall administer a massage to a patron exhibiting any skin fungus, skin infection, skin inflammation, or skin eruption unless a physician duly license by the State of Illinois certifies in writing that such persons may be safely massaged, prescribing the conditions thereof.
- F. Massage therapists and massage establishment employees and agents must wear clean, non-transparent outer garments covering the entire body, excluding the head, neck, arms, hands, knees (from the center of the kneecap downwards), legs and feet, when in the presence of any other persons within the establishment and/or while engaged in the practice of massage therapy.
- G. Massage establishments are prohibited from advertising in ways which would suggest that employees are dressed in a way other than that allowed by this section, or that any services other than those defined by this ordinance are available.
- H. Any license issued under this ordinance shall be displayed in a conspicuous location within the customer area of the licensed establishment. Massage therapists shall display their permits in a conspicuous location within the customer area at all times when they are

performing or holding themselves out as available to perform any massage activities. In lieu of this display requirement, when massage services are provided at the patron's location, the permit shall be presented to the customer before such services commence.

- I. Any license issued under this ordinance shall be displayed in a conspicuous location within the customer area of a licensed establishment. Massage therapists shall wear or otherwise display in a conspicuous location within the customer area their photo identification permit cards at all times when they are performing, or holding themselves out as available to perform, any massage activities. In lieu of this display requirement, when massage services are provided at the patron's location, the photo identification permit card shall be presented to the customer before such services commence.
- J. At all times during the hours of operation of a massage establishment there shall be present a manager or other employee of the licensee who shall be not less than eighteen (18) years of age.
- K. No bathroom, bath, shower, and/or clothes changing area may be occupied by more than one (1) person at any one time. No massage therapist, massage therapy establishment owners, managers, employees and/or agents may be in any sauna or whirlpool while a patron is within same.
- L. No massage establishment licensee shall employ as a massage therapist any person unless said person has obtained and has in effect a permit issued pursuant to this ordinance.
- M. It shall be unlawful for any person who holds a license to operate a massage establishment or a massage therapist permit within the City to fail to comply with the conditions and regulations set forth in this section or to suffer or permit noncompliance with such conditions and regulations on or within the licensed premises.
- N. It shall be unlawful for any person, association, firm or corporation licensed as provided in this ordinance to operate under any name or conduct business under any designation not specified in such license.
- O. It shall be unlawful for any person, corporation, firm or association licensed or permitted under this Ordinance to provide massage therapy services between the hours of 9:00 p.m. and 7:00 a.m.

5.20.160 PENALTY FOR VIOLATION.

Any person, corporation, firm or partnership found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this ordinance shall be punished by a fine of not less than Two Hundred (\$200.00) Dollars, nor more than Five Hundred (\$500.00) Dollars, for each such offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues. In addition to any other penalty, a licensee or permittee violating any provision of this ordinance may be subject to having their license or permit revoked, suspended, or not renewed.

5.20.170 PREMISES RESTRICTIONS.

- A. No massage establishment shall be located on any premises for which a license to sell alcoholic liquor has been issued.
- B. The massage establishment premises shall be in compliance with applicable codes and ordinances of the City of St. Charles including, but not limited to, zoning, building, and life safety codes.
- C. When any license shall have been revoked for cause, no license shall be granted to any person for the period of one year thereafter for the conduct of a massage establishment in the premises described in the revoked license.

5.20.180 GRANDFATHER CLAUSE.

At the time this ordinance becomes effective, those persons operating a massage establishment or performing massage therapy as defined herein who do not meet the requirements provided herein, may apply for a provisional massage establishment license or provisional massage therapist permit provided that the applicant has been in business within the City of St. Charles for at least six (6) months in the case of an establishment, and, in the case of an applicant for a permit was practicing massage therapy within the City of St. Charles prior to December 15, 1997. Said provisional licenses or permits shall be effective for a period of one (1) year from the effective date of this ordinance to provide adequate time to such persons or establishments to meet the requirements of Sections 5.20.040 and 5.20.050. However, such provisional licenses or permits shall only be issued if the applicant meets all other requirements of this ordinance. The fee for said license shall be as set forth in Section 5.20.090. Said provisional license and/or permit must be applied for within thirty (30) days of the effective

date of this ordinance or this grandfather clause shall not be effective regarding that person and/or establishment.

5.20.190 SEVERABILITY.

If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

2. That after the adoption and approval hereof this Ordinance shall (i) be printed or published in book or pamphlet form, published by the authority of the Council, or (ii) within thirty (30) days after the adoption and approval hereof, be published in a newspaper published in and with a general circulation within the City of St. Charles.

PRESENTED to the City Council of the City of St. Charles, Illinois, this 15th day of December, 1997.

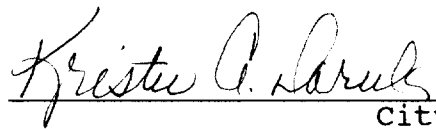
PASSED by the City Council of the City of St. Charles, Illinois, this 15th day of December, 1997.

APPROVED by the Mayor of the City of St. Charles, Illinois, this 15th day of December, 1997.



Mayor

ATTEST:

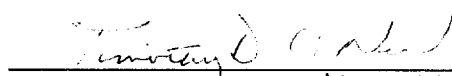


City Clerk

COUNCIL VOTE:

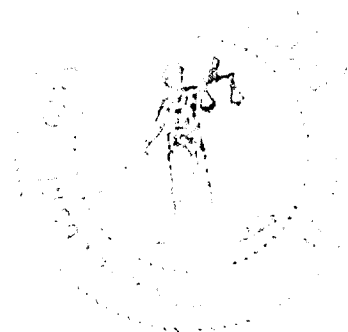
Ayes : 11
Nays : 0
Absent : 1

APPROVED AS TO FORM:



City Attorney

DATE: 12/15/97



State of Illinois)
)
Counties of Kane and DuPage)

Certificate

I, KRISTIE A. DARULA, certify that I am the duly elected and acting municipal clerk of the city of St. Charles, Kane and DuPage Counties, Illinois.

I further certify that on December 15, 1997, the Corporate Authorities of such municipality passed and approved Ordinance No. 1997-M-137, entitled

"An Ordinance Amending Title 5, "Business Licenses and Regulations," Chapter 5.20, "Massage Establishments and Massage Therapists," of the St. Charles Municipal Code",

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 1997-M-137, including the Ordinance and a cover sheet thereof was prepared, and a copy of such Ordinance was posted in the municipal building, commencing on December 19, 1997, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the municipal clerk.

DATED at St. Charles, Illinois, this 17th day of December, 1997.

Kristin A. Parule
Municipal Clerk

(S E A L)

